

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket Nos. 2018-029-00160C and 2018-029-00162C

Parcel Nos. 11-32-484-011 & 11-32-484-005

Benjamin Brinck (620 Washington LLC)

Appellant,

vs.

Des Moines County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 30, 2019. Benjamin Brinck was self-represented and appeared on behalf of 620 Washington LLC. Des Moines County Attorney Todd Chelf represented the Board of Review.

620 Washington LLC (hereinafter referred to as the Appellant) owns adjoining commercial properties in Burlington and requested the appeals be consolidated.

The following table summarizes the subject properties' January 1, 2018 assessments. (Exs. A).

Docket	Parcel #	Address	Assessed Land Value	Assessed Improvement Value	Total Assessed Value
2018-029-00160C	11-32-484-011	620 Washington St	\$10,500	\$98,000	\$108,500
2018-029-00162C	11-32-484-005	7th & Washington	\$17,700	\$0	\$17,700

The Appellant petitioned the Board of Review and claimed the subject properties' assessments were not equitable as compared with assessments of other like property and that the properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1 & 2). The Board of Review denied the petition for the property located at 7th and Washington; and modified the assessment for the property located at 620 Washington Street to a total assessed value of \$90,400, allocated as

\$10,500 in land value and \$79,900 in improvement value. The combined assessed value of the two properties is \$108,100. The Appellant reasserted its claims before PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

620 Washington Street (Church) is a 0.161-acre site improved with a brick and stone church built in 1838. The church has 3281 base square feet with an additional 2600 square feet of finish in the full basement, a 658 square foot mezzanine, and a 712 square foot patio. There are also two warehouse areas built in 1985 and 2010. In addition to 60% physical depreciation, the Assessor has applied 60% functional obsolescence, 60% economic obsolescence, and 20% other obsolescence to the improvements. (Docket 00160C, Ex. A).

The adjoining property (Garden) at 7th and Washington is a 0.270-acre site improved with gardens, patios, and walking paths including handicap accessible ramps. (Docket 00162C, Ex. A).

The Appellant purchased the subject properties from a government or exempt organization in 2010 for \$80,000. (Dockets 00160C & 00162C, Ex. A; Docket 00160C, Ex. 2). Brinck testified the subject properties had formerly been used as a church and adjoining garden area prior to his purchase. For the last three years they have been operated as a wedding venue and event center but due to increased competition, the tenants will be exiting this business. He currently receives \$1500 month rent from these tenants but they will be vacating the building at the end of November 2019, at which time he will have no income for the subject properties. Brinck acknowledged the subject properties are currently on the market for \$285,000 but this includes the existing business and all of the furniture. (Docket 00160C, Ex. L). In his opinion, the Church and Garden have access issues because of the number of steps needed to enter the facility, which has affected its desirability to be rented out for events.

In his opinion, old churches in the downtown Burlington area are not increasing in value. Despite this, he acknowledged the Church and Garden are one of the “crown jewels” of the downtown Burlington area but it is a very costly property to maintain. Photographs submitted by the Board of Review support Brinck’s testimony the subject properties have appealing architectural detail and extensive landscaping. (Docket 00160C, Ex. G & Docket 00162C, Ex. D).

Brinck reported the cost to maintain the properties have resulted in an average operating loss of \$25,000 per year. (Docket 00160C, Ex. 2). He testified the cost of maintaining the Garden is very high and it has multiple retaining walls that are failing, which will also cost a considerable sum of money to repair.

The Church

Brinck submitted information on two Burlington churches he believes support his claims regarding the Church. (Docket 00160C, Exs. 3, 4 & D; Docket 00162C, Ex. G). The following table is a summary of these sales.

Comparable Property	Base SF	Sale Price	Sale Date	SP/SF	Assessed Value	AV/SF
Subject (Church)	3284	\$80,000	Jan-10	\$24.36	\$90,400	\$27.53
601 Washington	5478	\$ 6,462	Aug-16	\$ 1.18	\$29,700	\$5.42
1204 Washington	3200	\$65,000	Jul-18	\$20.31	\$85,000	\$26.56

601 Washington is located across the street and east of the subject property. Brinck admits it is not in as good of condition as the subject property. A photograph of the building shows it is in general disrepair. (Docket 00160C, Ex. 3A). Brinck testified it sold in August 2016 for \$6462. Brinck acknowledged the property has not been occupied for many years. Des Moines County Assessor Matt Warner testified for the Board of Review. He noted that the condition of 601 Washington is significantly inferior to the subject property. He testified it has not had water or electricity to the property for 15-20 years. Other than it being a former church in downtown Burlington, he does not consider it comparable to the subject property.

1204 Washington is located approximately six blocks west of the subject property and is in very good condition. Brinck testified the non-profit that restored this building recently sold it on contract for \$65,000. Because the property was purchased at such a low price, according to Brinck they are able to charge less for renting the space for events, which has undercut his tenant's ability to compete.

Brinck did not adjust these sales for differences compared to the subject property to establish an actual value of the subject property as of January 1, 2018.

The Board of Review submitted three comparable sales of churches, two of which are located in Burlington, and one in Middletown, a smaller nearby community. The following table is a summary of these sales. (Docket 00160C, Exs. D-F).

Comparable Property	Base SF	Sale Price	Sale Date	SP/SF	Assessed Value	AV/SF
Subject (Church)	3284	\$80,000	Jan-10	\$24.36	\$90,400	\$27.53
1204 Washington	3200	\$65,000	Jul-18	\$20.31	\$85,000	\$26.56
225 Main St, Middletown	2952	\$54,000	Oct-16	\$18.29	\$67,000	\$22.70
1126 Locust St	6168	\$200,000	Mar-16	\$32.43	\$319,900	\$51.86

Like Brinck, the Board of Review also relied on 1204 Washington as a comparable property. Warner testified this is also a former church but it is inferior to the subject property and is not located in the scenic downtown area of Burlington. He noted this also sold from a tax exempt organization and therefore the sale would not be considered a normal transaction.

The Board of Review also asserted the 225 Main Street, Middletown property lacked the scenic location of the subject. It was included because it is the sale of a church although it is inferior to the subject. It was also sold by an exempt organization.

Lastly 1126 Locust Street was sold as a church and is still used as a church. In Warner's opinion it is located in a less desirable part of Burlington compared to the subject property.

The Board of Review did not adjust any of its comparable sales for differences between them and the subject property to arrive at a conclusion of the subject's January 1, 2018 actual value. Even unadjusted, however, the subject's 2018 assessed value per-square-foot is within the range of the comparables' sales prices per-square-foot.

Warner testified he was unaware the current listing of the subject property included personal property or business value. (Ex. G). He noted this was not mentioned in the listing.

The Garden

Brinck testified the Garden was originally a street owned by the City of Burlington, which was subsequently donated to the Art Center and developed into a garden area with numerous rock walls, paths, and handicap access. He acknowledges the property looks great but is expensive to maintain because of the cost of watering, a steep grade and a poor drainage system that has caused issues with the retaining walls. He submitted a photograph of a portion of a retaining wall on the edge of the Garden. (Ex. 4). Brinck explained water is draining from the adjoining property and the natural flow of the drainage is impacting the integrity of the wall. He further asserts that if he does not tackle the cost to fix it, he will have to disclose the structural issues if he sells the property.

Regarding the Garden property, Brinck submitted information on two nearby vacant lots. (Docket 00162C, Exs. 2, 2A, 3, & 3A). Neither of these properties have recently sold. The following table summarizes the sites.

Comparable Property	Site Size (SF)	2018 Assessed Value	AV/SF
Subject (Garden)	11,769	\$17,700	\$1.50
610 Washington	6,480	\$11,300	\$1.74
719 Columbia St	21,625	\$16,900	\$0.78

610 Washington is just east of the Garden and is owned by the City of Burlington. Brinck testified he spoke with the Development Director for the City of Burlington, and that the site could be purchased for \$500. Warner testified that if this property sold for \$500 it would not be considered a normal transaction.

The property at 719 Columbia is also located near the subject property and had formerly been an extensive and elegant garden but it is now overgrown. Brinck reported the 2019 assessment has been lowered to \$10,200, or \$0.47 per square foot.

In Brinck's opinion, these are comparable because of their proximity to the subject and the Columbia Street comparable is evidence of the value of a garden when it is no longer maintained.

Warner testified the Garden site was valued in conjunction with the Church property because they operate as a single-unit. After a total value for the combined sites is determined, they are then allocated between the two parcels.

The Board of Review submitted three comparable properties, which are summarized in the following table. (Docket 00162C, Exs. E-G).

Comparable Property	Site Size (SF)	2018 Assessed Value	AV/SF
Subject (Garden)	11,769	\$17,700	\$1.50
612 Washington	7,865	\$12,000	\$1.53
613 Washington	6,726	\$15,900	\$2.36
601 Washington	9,600	\$14,400	\$1.50

All three of these properties have improvements, but the Board of Review's intent was to demonstrate that all of the sites are equitably assessed.

Analysis & Conclusions of Law

The Appellant asserts the subject properties are inequitably assessed and assessed for more than the value authorized by law. § 441.37(1)(a)(1 & 2). The burden of proof is upon the taxpayer, who “must establish a ground for protest by a preponderance of the evidence. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). The Appellant offered no evidence the Assessor applied an assessment method in a non-uniform manner.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after considering the actual values (2017 sales) and assessed values (2018 assessments) of comparable properties, the subject property is assessed at a higher portion of its actual value. Because the *Maxwell* test requires a showing of the subject property’s actual market value and the Appellant’s over assessment claim requires the same showing, we forgo further equity analysis and turn to the over assessment claim.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm’s-length sale of the property. *Id.* The sales comparison method is the preferred method for valuing property under Iowa law. *Compiano*, 771 N.W.2d at 398; *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W. 2d at 783. “Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court.” *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86,88 (Iowa 1977)).

Brinck contends the subject’s 2018 assessment should be \$80,000; the same amount he paid when he purchased the properties from an exempt organization in 2010. Without more, we are not persuaded that transaction is a fair and accurate representation of the properties’ 2018 fair market value.

In regards to the Garden, the Appellant offered two comparable properties it believes demonstrate it is over assessed. The Board of Review also offered three comparable properties in an attempt to show the Garden’s land value is equitable. In general, simply comparing assessments or assessed values per-square-foot is insufficient to demonstrate the property’s actual value. Even if it were an acceptable method, we are not convinced the Church’s assessment is excessive because it fits squarely within the range of assessed value per-square-foot of the all the comparables offered. In fact, the only property with a lower assessed value per-square-foot is 719 Columbia. At nearly twice the size, we would expect 719 Columbia to have a lower value per-square-foot based on the law of diminishing returns.¹

Regarding the Church, the Appellant submitted two sales. We do not find that either unadjusted sale can serve as an accurate reflection of the subject’s actual fair market value. 601 Washington is in significantly inferior condition relative to the subject. 1204 Washington is more similar to the subject, but inferior aesthetically. It was also a contract sale from a tax-exempt organization. Sale prices of properties in abnormal transactions, such as contract sales, must not be considered or must be adjusted to eliminate the factors which distort market value. *Id.* Iowa courts have acknowledged that contract sales should only be used with “considerable care.” *Redfield v. Iowa State*

¹ Diminishing return (also known as decreasing returns) is based on the premise that additional expenditures beyond a certain point will not yield a return commensurate with the additional investment. THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 32 (14th ed. 2013). See also INT’L. ASSOC. OF ASSESSING OFFICERS, PROPERTY ASSESSMENT Valuation 19 (3d. ed. 2010).

Highway Comm'n. 110 N.W.2d 397, 402 (Iowa 1961). Unadjusted contract sales “must be carefully examined to ensure they reflect the market value of the property.” *Payton Apartments, Ltd. v. Bd. of Review of City of Des Moines*, 358 N.W.2d 325, 329 (Iowa Ct. App. Sept. 25, 1984). This sale was not adjusted for the terms of sale, nor was it adjusted for any other physical differences that may exist between it and the Church. Therefore, we find this sale to be unreliable.

Typically, market value is demonstrated with comparable sales, a competent appraisal, or a comparative market analysis. Acknowledging the potential difficulty of finding sales comparable to the subject, we also note Brinck did not offer any opinion of value based on the other valuation approaches, such as cost or income.

Viewing the record as a whole, we find the Appellant failed to show its properties are inequitably assessed or assessed for more than the value authorized by law.

Order

PAAB HEREBY AFFIRMS the Des Moines County Board of Review’s actions.

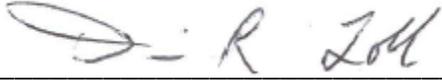
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

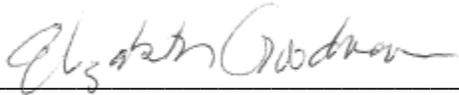
Any judicial review action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2018).



Karen Oberman, Board Member



Dennis Loll, Board Member



Elizabeth Goodman, Board Member

Copies to:

Benjamin Brinck for 620 Washington LLC by eFile

Todd Chelf for the Des Moines County Board of Review by eFile